

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1540 – SB 2518

March 14, 2018

**SUMMARY OF ORIGINAL BILL:** Authorizes retailers to sell or give away alcoholic beverages during the hours which beer may be sold in the jurisdiction where the retailer is located.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Revenue – Exceeds \$2,883,800

Increase Local Revenue – Exceeds \$1,019,600/Permissive

**SUMMARY OF AMENDMENT (014192):** Deletes all language after the enacting clause. Beginning July 1, 2018, retail package stores (retailers) will be authorized to sell alcoholic beverages between 10 a.m. and 11 p.m. on Sundays. Beginning January 1, 2019, retail food stores will be authorized to sell wine between 10 a.m. and 11 p.m. on Sundays.

Authorizes a holder of a retail license, whose license is to be surrendered to the Alcoholic Beverage Commission (ABC) via 30-day irrevocable notice, to sell any unopened bottle inventory to any customer, retail licensee, or liquor-by-the-drink (LBD) licensee below the cost paid by the retailer to purchase the alcoholic beverages from the wholesaler so long as the price is not lower than ten percent of such purchase price.

Enacts the Intoxicating Liquor Sales Law (the Law). The Law prohibits any retailer to advertise, offer to sell, or sell at retail, intoxicating liquor at less than the cost to the retailer. Any violation of the Law is a Class C misdemeanor. Authorizes any person, entity, or trade association injured by a violation of this Law to seek action in a court of equitable jurisdiction to prevent, restrain, or enjoin such violation. If such action establishes a violation of the Law, the court shall assess in favor of the plaintiff and against the defendant, injunctive relief, the costs of the suit, and the amount of actual damages sustained by the plaintiff. If injunctive relive is sought or required, any person injured by a violation may maintain an action for damages alone in any court of general jurisdiction. Requires the ABC to penalize any retailer in violation of the Law, a penalty not to exceed \$1,000 for the first violation, a penalty not to exceed \$2,500 for a second violation, and a penalty not to exceed \$5,000 for any third or subsequent violation. Establishes that the Law does not apply to sales at retail made where intoxicating liquors are: (a) sold upon the complete final liquidation of a business; (b) advertised, offered for sale, or sold by any fiduciary or other officer acting under the order of any court; (c) closeouts and case discounts; or (d) such other occasional discounts as defined by the ABC.

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Authorizes a licensed wholesaler to extend credit to a licensed retailer for a period not to exceed ten days from the date of delivery of the product; provided, that the payment is made by electric funds transfer or escrow prepayment.

Restricts the issuance of new retailers' licenses, from FY18-19 through FY20-21, to applications for stores in jurisdictions that initially approve the retail sale of alcoholic spirituous beverages by local option election after April 1, 2018. For jurisdictions that have approved the retail sale of alcoholic spirituous beverages by local option election prior to April 1, 2018, a person or party would be required to purchase an existing license, or acquire the right to purchase an existing license from an existing licensee and then make application to the ABC for transfer of such existing license. Authorizes an individual that has purchased or acquired the right to purchase a license from a licensee to maintain the specific location attributed to the transferor of the previous licensee or, upon approval of the ABC, transfer the license to another location; however, such new location cannot be within 1,500 feet of another location engaged in the retail sale of alcoholic spirituous beverages and must be located within the same jurisdiction wherein the transferor's premises was located.. The prohibition against new licenses within existing local option jurisdictions and the authorization of the transfer of licenses, both enacted by Sections 8-13 of Amendment 014192, shall become effective upon becoming law and be repealed effective July 1, 2021.

## **FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

**Increase State Revenue – \$2,307,000/FY18-19**

**Exceeds \$2,883,800/FY19-20 and Subsequent Years**

**Decrease State Revenue - \$17,300/FY18-19/ABC**

**\$35,800/FY19-20/ABC**

**\$52,800/FY20-21/ABC**

**Increase Local Revenue – \$817,700/FY18-19/Permissive**

**Exceeds \$1,021,600/FY19-20 and Subsequent Years/Permissive**

**Other Fiscal Impact - Due to multiple unknown factors, any amount of fine revenue collected by the ABC, as a result of enactment of the Intoxicating Liquor Sales Law cannot be estimated with reasonable certainty. Any additional fine revenue collected by the ABC will be used in the enforcement of the provisions of the Law.**

Assumptions for the bill as amended:

- Any impact on licensing or enforcement by the Alcoholic Beverage Commission (ABC) will be not significant.

- Retailers will be authorized to sell alcoholic beverages including wine on Christmas, Thanksgiving, Labor Day, New Year's Day, the Fourth of July, and all Sundays during hours authorized by local ordinance.
- Based on information from the Department of Revenue (DOR), sales tax collections from liquor stores in FY15-16 were \$66,088,455. Based on the added availability of wine in retail food stores as of July 1, 2016, and regular growth rates, under current law the total sales tax collection from the sales of packaged alcoholic beverages is reasonably estimated to exceed \$72,000,000 in FY18-19.
- Estimates of increases in sales of alcoholic beverages in states where Sunday sales prohibitions were repealed range from three to five percent.
- It is reasonably estimated that sales will increase statewide by an amount exceeding three percent.
- Amendment 013879 establishes that Section 3 of the bill as amended, which impacts sales of wine at retail food stores, will not become effective until January 1, 2019.
- For purpose of this fiscal analysis, it is assumed that total sales tax collections from sales of packaged alcoholic beverages are split 60/40, between retail package stores and retail food stores, or \$43,200,000 in state sales tax collections at package stores (\$72,000,000 x 60%) and \$28,800,000 in state sales tax collections at retail food stores (\$72,000,000 x 40%).

#### *Retail Package Stores*

- State sales tax collections will increase by an amount estimated to exceed \$1,296,000 (\$43,200,000 x 3.0%).
- The effective rate of apportionment to local government pursuant to the state-shared allocation is estimated to be 3.617 percent.
- The recurring increase in local revenue from the state-shared allocation is estimated to be \$46,876 (\$1,296,000 x 3.617%).
- The recurring increase in state sales tax revenue is estimated to be \$1,249,124 (\$1,296,000 - \$46,876).
- The average local option sales tax rate is 2.5 percent statewide, or approximately 35.714 percent (2.5 / 7.0) of the state sales tax rate.
- The permissive recurring increase in local option sales tax revenue is estimated to be \$462,853 (\$1,296,000 x 35.714%).
- Alcoholic beverages are taxed additional excise taxes per gallon based on the type of alcohol.
- Based on information from the DOR, additional tax collections from such taxes will equal approximately 45 percent of state sales tax collections.
- The total recurring increase in alcohol excise tax collections is estimated to exceed \$583,200 (\$1,296,000 x 45.0%).
- Pursuant to Tenn. Code Ann. § 57-3-306, such excise tax collections are distributed 82.5 percent to the General Fund and 17.5 percent to counties
- The recurring increase in state alcohol excise tax revenue is estimated to exceed \$481,140 (\$583,200 x 82.5%).
- The permissive recurring increase in local alcohol excise tax revenue is estimated to exceed \$102,060 (\$583,200 x 17.5%).

- The total recurring increase in state revenue beginning in FY18-19 is estimated to exceed \$1,730,264 (\$1,249,124 + \$481,140).
- The total permissive recurring increase in local revenue is estimated to exceed \$613,789 (\$48,876 + \$462,853 + \$102,060).

*Retail Food Stores – Wine Sales*

- State sales tax collections will increase by an amount estimated to exceed \$864,000 (\$28,800,000 x 3.0%).
- The effective rate of apportionment to local government pursuant to the state-shared allocation is estimated to be 3.617 percent.
- The recurring increase in local revenue from the state-shared allocation is estimated to be \$31,251 (\$864,000 x 3.617%).
- The recurring increase in state sales tax revenue is estimated to be \$832,749 (\$864,000 - \$31,251).
- The average local option sales tax rate is 2.5 percent statewide, or approximately 35.714 percent (2.5 / 7.0) of the state sales tax rate.
- The permissive recurring increase in local option sales tax revenue is estimated to be \$308,569 (\$864,000 x 35.714%).
- Alcoholic beverages are taxed additional excise taxes per gallon based on the type of alcohol.
- Based on information from the DOR, additional tax collections from such taxes will equal approximately 45 percent of state sales tax collections.
- The total recurring increase in alcohol excise tax collections is estimated to exceed \$388,800 (\$864,000 x 45.0%).
- Pursuant to Tenn. Code Ann. § 57-3-306, such excise tax collections are distributed 82.5 percent to the General Fund and 17.5 percent to counties
- The recurring increase in state alcohol excise tax revenue is estimated to exceed \$320,760 (\$388,800 x 82.5%).
- The permissive recurring increase in local alcohol excise tax revenue is estimated to exceed \$68,040 (\$388,800 x 17.5%).
- Sales of alcoholic beverages may cannibalize some sales of beer on Sundays and holidays; however, there will be an increase in beer sales at stores currently closed on Sundays and holidays that will now open on such days. The net impact on sales of beer is estimated to be not significant.
- All other impacts on tax collections related to sales of alcoholic beverages, beer, complementary goods, and business related taxes are estimated to be not significant.
- The recurring increase in state revenue in FY19-20 and subsequent years is estimated to exceed \$1,153,509 (\$832,749 + \$320,760). Due to the effective date of January 1, 2019, the increase in state revenue in FY18-19 is estimated to be \$576,755 (\$1,153,509 x 50%).
- The permissive recurring increase in local revenue in FY19-20 and subsequent years is estimated to exceed \$407,860 (\$31,251 + \$308,569 + \$68,040). Due to the effective date of January 1, 2019, the permissive increase in local revenue in FY18-19 is estimated to be \$203,930 (\$407,860 x 50%).

#### *Total Collections – Retail Package Stores and Retail Food Stores*

- The total increase in state revenue in FY18-19 is estimated to be \$2,307,019 (\$1,730,264 + \$576,755).
- The total recurring increase in state revenue in FY19-20 and subsequent years is estimated to exceed \$2,883,773 (\$1,730,264 + \$1,153,509).
- The total increase in local revenue in FY18-19 is estimated to be \$817,719 (\$613,789 + \$203,930).
- The total recurring increase in local revenue in FY19-20 and subsequent years is estimated to exceed \$1,021,649 (\$613,789 + \$407,860).

#### *Intoxicating Liquor Sales Law*

- Enacting the Intoxicating Liquor Sales Law may result in penalties assessed against retailers found in violation of the law.
- Violators of the Law will be subject to fines in various amounts, based on the number of consecutive violations committed.
- The ABC is charged with administering the law and collecting such fines.
- It is unknown if there will be any violations of the law, and if any, what the precise fine would be.
- Due to multiple unknown factors, any amount of fine revenue collected by the ABC cannot be estimated with reasonable certainty.
- Any additional fine revenue collected by the ABC will be used in the enforcement of the provisions of the Law.
- A small increase in cases in the court system, which will result in additional state and local government expenditures for processing the cases and additional state and local government revenue from fees, taxes and costs collected. These expenditures and revenue are estimated to be not significant.

#### *Prohibition of New Licenses and License Transfers*

- The bill as amended prohibits the issuance of a new retail package store license, upon the effective date of this act until July 1, 2021, within any jurisdiction that has, prior to April 1, 2018, approved the retail sale of alcoholic spirituous beverages by local option election; however, applications received as of the effective date of this legislation, for a new retail package store license in a jurisdiction that has, prior to April 1, 2018, approved the retail sale of alcoholic spirituous beverages by local option election, is valid for license issuance.
- This legislation will result in a decrease in the number of new licenses issued in existing jurisdictions which currently allow the sale of alcoholic spirituous beverages at retail.
- Based on information provided by the ABC, this legislation will result in a decrease of 20 licenses issued per year, between the effective date of this bill, July 1, 2018, and the repeal date of Sections 7-11, or July 1, 2021; therefore, a reduction in licenses issued between or for fiscal years FY18-19 through FY20-21.
- Due to the fact that Amendment 014192 allows existing applications, as of the effective date of this act, to be received for jurisdictions previously electing to allow the sale of alcoholic spirituous beverages, it is assumed that in FY18-19 there will be slightly lower decrease in licenses issued, or 15 in total.

- Pursuant to Tenn. Code Ann. § 57-3-204(b), a one-time retailer application fee of \$300 and an initial and annual renewal licensing fee of \$850.
- A decrease in state revenue to the ABC of \$17,250 in FY18-19  $[(15 \times \$300) + (15 \times \$850)]$ .
- A decrease in state revenue to the ABC of \$35,750 in FY19-20  $\{(20 \times \$300) + [(15 + 20) \times \$850]\}$ .
- A decrease in state revenue to the ABC of \$52,750 in FY20-21  $\{(20 \times \$300) + [(15 + 20 + 20) \times \$850]\}$ .
- It is unknown whether any of such applicants will apply in FY21-22 or any subsequent years, in addition to the estimated 20 applicants in any given year. Therefore, any increase in state revenue to the ABC in FY21-22 and subsequent years is estimated to be not significant.
- Currently, pursuant to ABC rules 0100-03-.18(1)(b), an application for transfer must pay or must have paid the full annual license fee for the year in which the transfer is requested; therefore, any additional transfers experienced by ABC will have no significant fiscal impact upon the ABC, as a transfer simply shifts who will pay the annual renewal licensure fee.
- Prohibiting the issuance of a new retail package store license until July 1, 2021, will not result in a significant decrease in alcoholic beverage sales in the state, or any associated state and local tax collections.

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

/jdb